IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Bail Appl..No. 5163 of 2007()

C.C.NO.54/2007 OF BELLARD PIER MUMBAI

PETITIONER//ACCUSED:

K.K. ANZAR @ ANAZ,
KADAVANATTTU, NAMBYAPURAM, PALLURUTHY WEST,
ERNAKULAM.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM (STATION HOUSE
OFFICER, KOCHI CUSBA POLICE STATION).

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.5163 of 2007

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Dated this the 22nd day of August, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Sec. 138 of the Negotiable Instrument Act before the Court of Metropolitian Magistrate Bellerd Pier at Mumbai. The petitioner had received summons to appear before that Court on 12.4.07. The petitioner could not appear before that Court. Consequently a warrant of arrest has been issued against the petitioner by the said court. The petitioner finds the warrant of arrest chasing him. According to the petitioner, he is absolutely innocent. His absence on the dates of posting was not wilful, but was due to reasons beyond his control. The petitioner is willing to appear before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further prays that appropriate directions under Section 438 Cr.P.C and/or 482 Cr.P.C, may be issued in favour of the petitioner.

2. Notice was given to the learned Public Prosecutor. Appropriate orders may be passed, submits the learned Public Prosecutor.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is now trite that powers under Section 438 Cr.P.C can be invoked by the superior court even when a person who apprehends arrest in execution of a non bailable warrant issued by a court after taking cognizance. Subject to appropriate conditions, which shall ensure the presence of the petitioner before the Court at Mumbai, I am satisfied that anticipatory bail can be granted to the petitioner.

4. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) Petitioner shall appear before the learned Chief Judicial Magistrate, Ernakulam on 30.08.2007.and shall execute a bond for Rs.50,000/-(Rupees fifty thousand only) with two solvent sureties, undertaking to appear before the Court of Metropolitian Magistrate Bellerd Pier at Mumbai on or before 1.10.07. Within 7 days from 1.10.07, the petitioner shall report to the learned Chief Judicial Magistrate that the said direction has been complied with and satisfy the learned Magistrate of such compliance. If the directions are not complied with, appropriate action under Section 446 Cr.P.C shall be taken by the learned Chief Judicial Magistrate, against the petitioner and his sureties.

ii) If the petitioner does not appear before the learned Chief

Judicial Magistrate , Ernakulam on or before 30.08.07 or if the petitioner does not later appear before the learned Chief Judicial Magistrate , Mumbai on or before 1.10.07, all the directions hereby issued shall stand elapsed and the Police shall be at liberty to arrest the petitioner and deal with him in accordance with law, as if these directions were not issued at all.

(iii) If the petitioner complies with the above directions, the petitioner shall be granted time till 1.10.07 to appear before the learned Magistrate and if he were arrested, he shall be released on his executing a bond for Rs.50,000/- (Rupees fifty thousand only) without any sureties, undertaking to appear before the learned Magistrate, Ernakulam on 30/8/2007 and also to appear before the learned Magistrate , Mumbai on or before 1.10.07

(R.BASANT, JUDGE)

sj